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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 RANDOLPH PETERSON and TRI-
8 CITY RAILROAD COMPANY LLC,

9 Plaintiffs,

10 v.

11 PORT OF BENTON COUNTY,

12 Defendant.

NO. 2:17-CV-0191-TOR

ORDER OF DISMISSAL

13 BEFORE THE COURT are the parties' responses to the Court's Order to
14 Show Cause. The Court has reviewed the record and files herein, and is fully
15 informed. ECF Nos. 348, 349. For the reasons discussed below, the Court hereby
16 **dismisses** the remaining state law claims with leave to re-file pursuant to 28 U.S.C.
17 § 1367.

18 **BACKGROUND**

19 This case arises out of a dispute over the use and management of railroad
20 tracks and surrounding property owned by Defendant and leased by Plaintiffs. The

1 Court has summarized the factual history of this case in several prior orders. *See*
2 ECF Nos. 85, 108, 196, 198, 249, 307, 310. Plaintiffs' Fourth Amended
3 Complaint, which is the current operative Complaint, alleges federal question
4 jurisdiction is present based on Plaintiffs' *qui tam* and 42 U.S.C. § 1983 claims.
5 ECF No. 167. However, this Court has dismissed all of Plaintiffs' federal claims.
6 ECF Nos. 196, 198, 237, 249, 307, 310, 335. Because this case has been narrowed
7 to only state law claims, the Court ordered the parties to show cause why this
8 matter should not be dismissed with leave to re-file the remaining matters in state
9 court. ECF No. 335. The parties timely responded. ECF Nos. 348, 349.

10 **DISCUSSION**

11 **A. Supplemental Jurisdiction**

12 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian*
13 *Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). A federal court may exercise
14 original jurisdiction over cases involving a question of federal law or between
15 parties of diverse citizenship. 28 U.S.C. §§ 1331, 1332. A federal court may also
16 exercise supplemental jurisdiction over pendent claims “that are so related to the
17 claims in the action within such original jurisdiction that they form part of the
18 same case or controversy.” 28 U.S.C. § 1367(a). However, if a district court has
19 dismissed all of the claims over which it has original jurisdiction, it may decline to
20 exercise supplemental jurisdiction over a related claim. 28 U.S.C. § 1367(c)(3).

1 The Ninth Circuit has reaffirmed the discretionary nature of a district court's
2 exercise of supplemental jurisdiction. *Acri v. Varian Assocs., Inc.*, 114 F.3d 999,
3 1000 (9th Cir. 1997), *supplemented*, 121 F.3d 714 (9th Cir. 1997), *as amended*,
4 (Oct. 1, 1997). "[A] federal court should consider and weigh ... the values of
5 judicial economy, convenience, fairness, and comity in order to decide whether to
6 exercise jurisdiction over a case brought in that court involving pendent state-law
7 claims." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988), *superseded*
8 *by statute on other grounds as stated in Stanford v. MemberWorks, Inc.*, 625 F.3d
9 550, 561 (9th Cir. 2010) (citing *United Mine Workers of America v. Gibbs*, 383
10 U.S. 715 (1966)). "[I]n the usual case in which all federal-law claims are
11 eliminated before trial, the balance of factors to be considered under the pendent
12 jurisdiction doctrine ... will point toward declining to exercise jurisdiction over the
13 remaining state-law claims." *Carnegie-Mellon*, 484 U.S. at 350 n.7.

14 **B. Remaining Claims**

15 As an initial matter, it is unclear whether the Court could exercise
16 supplemental jurisdiction over the current breach of contract claims. To support
17 supplemental jurisdiction, "state and federal claims must derive from a common
18 nucleus of operative fact." *Gibbs*, 383 U.S. at 725. As Defendant accurately notes
19 in its Response, Plaintiffs' claims have been ambiguously pled and argued, and
20 their factual theory of the case has evolved several times. ECF No. 349 at 6-7.

1 Plaintiffs' federal claims involved factual issues of tax collection practices, third-
2 parties' usage of the railroad tracks at issue, terminated parties' actions taken on
3 adjacent property, and the receipt and use of state grant money. The current breach
4 of contract claims center on the meaning of a term in the maintenance provision of
5 the contract. While these claims involve the same parties and the same railroad
6 tracks, they do not clearly derive from the same common nucleus of operative fact.

7 Even if the Court can properly exercise supplemental jurisdiction over the
8 breach of contract claims, values of judicial economy, comity, fairness, and
9 convenience weigh in favor of allowing the state court to resolve these claims.
10 This case has not yet proceeded to trial and therefore falls among the "usual cases"
11 in which a federal court should decline to exercise supplemental jurisdiction over
12 remaining state law claims. *Carnegie-Mellon*, 484 U.S. at 350 n.7.

13 Defendant objects to dismissal on the grounds that this case "is literally at
14 the one-yard line," with the trial date one month away. ECF No. 349 at 2.
15 Although the calendar date is approaching, much work remains to be done in this
16 case. Plaintiffs' breach of contract claim is currently subject to Defendant's
17 pending motion for summary judgment. ECF No. 337. Defendant's breach of
18 contract counterclaim is currently subject to Defendant's own pending motion for
19 summary judgment, ECF No. 275, and Plaintiffs' motion for partial summary
20 judgment on statute of limitations grounds, ECF No. 272. Plaintiffs have also

1 raised twelve affirmative defenses to Defendant's counterclaim, eleven of which
2 are currently the subject of Defendant's pending motion for summary judgment.
3 ECF No. 278. These pending motions will involve substantial application of state
4 law and are better suited for resolution in state court.

5 Defendant also objects to dismissal on the grounds that this Court has
6 invested significant resources into this case already and the parties will be
7 burdened if required to start again in state court. ECF No. 349 at 11-13. While
8 Defendant is correct that this Court has disposed of several claims in this case, it is
9 also true that these claims are largely unrelated, legally and factually, to the current
10 breach of contract claims. Indeed, this case has been reduced to a relatively
11 narrow set of questions: (1) what obligations are imposed by the maintenance
12 provision of the parties' contract; (2) whether those obligations are being met; and
13 (3) what damages, if any, have resulted from noncompliance. That this Court has
14 extensive familiarity with the circumstances of Plaintiffs' separate *qui tam* and
15 takings claims does not put it in a better position than the state court to resolve
16 these contract questions. Additionally, the work the parties have already done on
17 the breach of contract claims can be re-submitted in state court with relative ease.

18 Finally, Defendant objects to dismissal on the grounds that the railroad
19 tracks at issue in this case are deteriorating, which Defendant argues poses safety
20 risks. ECF No. 349 at 13. However, Defendant has the option to pursue

1 immediate relief in state court, which could potentially address these concerns
2 sooner than the current federal trial date.


3 On balance, values of judicial economy, comity, fairness, and convenience
4 weigh in favor of allowing the state court to resolve the breach of contract claims.
5 This Court declines to exercise supplemental jurisdiction over the parties' breach
6 of contract claims.

7 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 8 1. The remaining state law claims are **DISMISSED** without prejudice and
9 with leave to re-file in state court pursuant to 28 U.S.C. § 1367(d).
10 2. All currently pending motions are **DENIED AS MOOT**. All hearings
11 and other deadlines, including the trial date, are **STRICKEN**.
12 3. The District Court Executive is directed to enter this Order, furnish
13 copies to counsel, and **CLOSE** the file.

14 **DATED** March 12, 2020.




THOMAS O. RICE
Chief United States District Judge